

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MIGUEL GONZALEZ,

X

Petitioner,

–against–

NEW YORK STATE DEPT. OF CORRECTIONS
COMMUNITY SUPERVISION,

ORDER
21-CV-2914

Respondent.

X

On February 9, 2022, Petitioner filed a CPL § 440.10 motion (“440.10 motion”) in state court challenging the same conviction that he challenges in the underlying habeas petition in this action. Petitioner requested a stay of his federal habeas proceeding pending a resolution of the 440.10 motion. On September 1, 2022, the Supreme Court of the City of New York denied Petitioner’s 440.10 motion. On November 1, 2022, this Court granted Petitioner’s requested stay pending Petitioner’s appeal of the denial of his 440.10 motion. (ECF No. 40.) The Court directed Petitioner to update the Court once he had sought leave to appeal the denial of his 440.10 motion from the New York State Court, Appellate Division (“Appellate Division”), and requested a status update from Respondent.

On December 13, 2022, at the Court’s request, Respondent filed a status report stating that the Appellate Division had informed it that Petitioner had not sought leave to appeal the denial of his 440.10 motion. (ECF No. 42.) On December 19, 2022, Petitioner filed a letter stating that he had filed a notice of motion to appeal the 440.10 denial (“Notice of Motion”), but that the Notice of Motion was returned to him by the Appellate Division because it was not notarized. (ECF No. 43.) On December 27, 2022, Petitioner filed the Notice of Motion on the

docket. (ECF No. 44.) The Notice of Motion bears a stamp indicating that it was received by the Appellate Division on November 28, 2022, but it was not notarized by that date. The Notice of Motion has now been notarized, but it is not clear to the Court whether the Notice of Motion has been re-submitted to the Appellate Division nor whether the Appellate Division has received it or rendered any decision as to it.


By **February 7, 2023**, Petitioner shall provide the Court with a copy of all of the submissions he has provided to the Appellate Division, including any attachments to his Notice of Motion; this should include his moving papers filed in the Supreme Court as well as the District Attorney's response. Petitioner shall include a cover letter that states whether his Notice of Motion has been received by the Appellate Division.

Additionally, by **February 28, 2023**, Respondent shall file a status update on the status of Petitioner's appeal of his 440.10 motion. The letter shall state whether the Appellate Division received Plaintiff's notarized Notice of Motion and whether any ruling has been made by the Appellate Division, to the best of Respondent's knowledge.

The Court also notes that the docket incorrectly reflects that Petitioner's filing at ECF No. 44 is an appeal of this Court's order granting Petitioner's requested stay. **The Clerk of the Court is respectfully directed to update the docket to reflect that the filing at ECF No. 44 is not an appeal of any order by this Court, but is simply a status update. The Clerk of the Court is also respectfully directed to mail a copy of this order to the Petitioner.**

SO ORDERED

Date: January 10, 2023
New York, NY


KATHARINE H. PARKER
United States Magistrate Judge